

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

SEP 4 2026

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

CONCERNED JEWISH PARENTS AND
TEACHERS OF LOS ANGELES; Mr.
DANIEL ELI Esquire, Attorney; DANNA
ROSENTHAL; AMY LESERMAN;
LINDSEY KOHN,

Plaintiffs - Appellants,

v.

LIBERATED ETHNIC STUDIES MODEL
CURRICULUM CONSORTIUM; UNITED
TEACHERS LOS ANGELES; CECILI
MYART-CRUZ, in individual and official
capacity; THERESA MONTANO, in
individual and official capacity;
GUADALUPE CARRASCO CARDONA,
in individual and official capacity; LOS
ANGELES UNIFIED SCHOOL
DISTRICT; DOES 1-10,

Defendants - Appellees.

No. 24-7676

D.C. No.

2:22-cv-03243-FMO-E

MEMORANDUM*

CONCERNED JEWISH PARENTS AND
TEACHERS OF LOS ANGELES; Mr.
DANIEL ELI Esquire, Attorney; DANNA
ROSENTHAL; AMY LESERMAN;
LINDSEY KOHN,

No. 25-3436

D.C. No.

2:22-cv-03243-FMO-E

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

Plaintiffs - Appellants,

v.

LIBERATED ETHNIC STUDIES MODEL
CURRICULUM CONSORTIUM; UNITED
TEACHERS LOS ANGELES; CECILI
MYART-CRUZ; THERESA MONTANO;
GUADALUPE CARRASCO CARDONA,

Defendants - Appellees,

LOS ANGELES UNIFIED SCHOOL
DISTRICT, DOES 1-10,

Defendants.

Appeal from the United States District Court
for the Central District of California
Fernando M. Olguin, District Judge, Presiding

Argued and Submitted May 20, 2026
Pasadena, California

Before: LEE, BUMATAY, and SUNG, Circuit Judges.

This case arises from an ethnic studies model curriculum for high school classrooms developed and championed by the Liberated Ethnic Studies Model Curriculum Consortium (the Consortium), an advocacy group. The proposed curriculum has not been formally proposed to nor adopted by the Los Angeles Unified School District (LAUSD). But the plaintiffs—who are Jewish parents with children enrolled in LAUSD and teachers within that district—claim that at least two teachers are informally using the curriculum, which allegedly promotes anti-Zionist

and antisemitic ideals. The plaintiffs also allege that the Consortium, along with the LAUSD public school teachers' union and individuals affiliated with these organizations, wield informal influence over district-wide curricular offerings. The plaintiffs sued, asserting civil rights claims under federal and state law. The district court dismissed with prejudice for insufficiency of the pleadings.

We have jurisdiction pursuant to 28 U.S.C. § 1291. We affirm the dismissal for lack of Article III jurisdiction, but we reverse the district court's denial of leave to amend and direct the court to allow the plaintiffs to file an amended complaint. We also vacate the district court's orders granting the defendants' special motions to strike and for attorneys' fees and costs under California law.

1. The plaintiffs lack standing. We review de novo a district court's order granting a motion to dismiss for failure to state a claim. *Hunt v. PricewaterhouseCoopers, LLP*, 159 F.4th 603, 611 (9th Cir. 2025).

While the complaint does not allege that LAUSD has formally adopted the curriculum, it alleges that two LAUSD teachers are currently using the challenged curriculum in their classrooms. We thus disagree with the district court's conclusion that the claims are unripe.

But we agree with the district court that the plaintiffs have not sufficiently alleged an injury-in-fact necessary for Article III standing. They must show that they suffered an invasion of some legally protected interest that is either actual or

imminent, and such harm must be concrete and particularized. *See Friends of the Earth, Inc., v. Laidlaw Environ. Servs., Inc.*, 528 U.S. 167, 180–81 (2000). In other words, the plaintiffs must allege that they have personally suffered harm because of the curriculum.

Absent more concrete allegations, the plaintiffs have not shown that they personally suffered the harm of religious or racial discrimination. The complaint does not allege that the curriculum—despite being used in two classrooms—is being taught at any classroom or even school where the plaintiffs’ children attend or plaintiff-teachers work. The alleged harm—the mere knowledge that the curriculum is being taught at two classrooms at LAUSD, which has over 100,000 high school students across dozens of schools—is too remote and speculative to constitute an injury-in-fact.

Our circuit’s standing precedent does not require the plaintiffs to allege that they or their children were directly exposed to antisemitic elements of the curriculum. But they must at least allege having personally suffered some harm plausibly attributable to the curriculum’s spread within the district or the plaintiffs’ schools—for example, that the plaintiffs have suffered an independent act of antisemitism causally linked to the curriculum’s use within LAUSD or the school. *See Juliana v. United States*, 947 F.3d 1159, 1168 (9th Cir. 2020) (ruling there was no redressability for standing but holding that there was concrete and particularized

injury to challenge federal fossil fuel policies when plaintiffs alleged a personal encounter with alleged impacts of fossil-fuel-driven climate change, like water scarcity).

The fact that the plaintiffs bring constitutional equal protection and free exercise claims does not vitiate their burden to plead personal harm. It is true, as the plaintiffs argue on appeal, that the Supreme Court has held that a constitutional injury can occur even when a plaintiff has yet to be subjected to the contested state action. But it has done so in cases where the plaintiffs alleged they would be subjected to an *existing* discriminatory policy in the future—policies that had been formally adopted and defended by the defendants in court. *See Parents Involved in Community Schools v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 718–19 (2007) (discriminatory school enrollment system would be necessarily applied during future enrollment seasons); *Mahmoud v. Taylor*, 606 U.S. 522, 559–60 (2025) (allowing free exercise claim challenging contested materials after board issued “clear and undisputed instructions” to expose children to the curriculum in the future). Here, the plaintiffs acknowledge that there is no existing policy formally adopted by LAUSD and offer no additional facts that would suggest inevitable or likely exposure to the curriculum (or its harmful effects). Thus, the operative complaint fails to plead injury-in-fact.

2. Dismissal of remaining claims with prejudice. Though we affirm the

district court’s dismissal for lack of standing, we hold that the district court erred when it dismissed the remaining claims with prejudice. We review a district court’s denial of leave to amend for abuse of discretion. *Bolden-Hardge v. Off. of California State Controller*, 63 F.4th 1215, 1220 (9th Cir. 2023). But “[d]ismissal without leave to amend is improper unless it is clear, upon de novo review, that the complaint could not be saved by any amendment.” *Thinket Ink Info. Res., Inc. v. Sun Microsystems, Inc.*, 368 F.3d 1053, 1061 (9th Cir. 2004).

In briefing and during argument, the plaintiffs offered several proposed amendments that could potentially cure the standing deficiencies. These include, for example, that the challenged curriculum has proliferated in the two-plus years that have passed since the lawsuit was filed, and that the plaintiffs’ children have suffered related antisemitic acts at school (such as bullying). While it is true, as the district court noted, that plaintiffs have amended the complaint on multiple occasions, the previous amendments appear to be mostly technical in nature, and the district court has only once ruled on the standing issue. Thus, we reverse the district court’s dismissal with prejudice.¹

¹ Because the district court concluded that plaintiffs lacked standing, it should not have reached the merits of the plaintiffs’ claims. It was appropriate to address sovereign immunity, *see Daniel v. Nat’l Park Serv.*, 891 F.3d 762 (9th Cir. 2018), but sovereign immunity issues could also be affected by amendments to the complaint. The parties also presented arguments on the merits in their briefs, and the panel asked questions about the merits. But because we are deciding only the Article III jurisdiction issue, we do not opine on the merits issues.

3. Special motions to strike and fees award. We review de novo an order granting a special motion to strike under Cal. Civ. Proc. Code § 425.16, or California's anti-Strategic Lawsuit Against Public Participation (anti-SLAPP) statute. *Herring Networks, Inc. v. Maddow*, 8 F.4th 1148, 1154–55 (9th Cir. 2021). We review a district court's award of attorney's fees for abuse of discretion. *Stanger v. China Electric Motor, Inc.*, 812 F.3d 734, 738 (9th Cir. 2016).

Because the district court erred in denying leave to amend, we must vacate its order granting the defendants' anti-SLAPP motion and their request for fees and costs. Cal. Civ. Proc. Code § 425.16 does not allow a court to both grant a defendant's special motion to strike *and* a plaintiff's request for leave to amend. *See Martin v. Inland Empire Util. Agency*, 130 Cal. Rptr. 3d 410, 423-24 (Cal. Ct. App. 2011). The purpose of the anti-SLAPP statute is to deter and dispose of at an early stage a meritless case implicating the First Amendment. *See id.* at 420. It would make little sense to grant an anti-SLAPP motion against the plaintiffs when the plaintiffs could prevail after amending their complaint. Similarly, our circuit has held that in federal court, a defendant may only prevail on an anti-SLAPP motion once it is clear the complaint cannot be saved by amendment. In *Verizon Delaware, Inc. v. Covad Commc'ns, Co.*, 377 F.3d 1081 (9th Cir. 2004), the Ninth Circuit rejected a defendant's appeal of the district court's decision to defer ruling on the defendant's special motion to strike under California's anti-SLAPP statute until the

plaintiff filed its amended complaint. 377 F.3d at 1091. The panel determined that striking down a complaint with a state procedural rule and awarding remedies when the plaintiff's claims may be salvageable upon amendment would "directly collide with Fed. R. Civ. Proc. 15(a)'s policy favoring liberal amendment." *Id.*

Because we reverse the district court's denial of leave to amend, we must vacate the district court's order granting the defendants' anti-SLAPP motion and their request for fees and costs.²

AFFIRMED in part, **REVERSED** in part, **VACATED** in part.

² Because we vacate the award of attorney's fees and costs, we do not determine now whether our circuit's decision in *United States ex rel. Newsham v. Lockheed Missiles & Space Co.*, 190 F.3d 963 (9th Cir. 1999), in which we held that California's anti-SLAPP attorney's fees provision may apply in federal court, is clearly irreconcilable with the Supreme Court's recent decision in *Berk v. Choy*, 607 U.S. 187 (2026).